



Republic of the Philippines  
Supreme Court  
Baguio City

EN BANC

**ROBERTO G. ROSALES, NICANOR M. BRIONES, PONCIANO D. PAYUYO, JOSE R. PING-AY, ISIDRO Q. LICO, AND JOSE TAN RAMIREZ,**  
in their capacity as members of the Board of Directors of NATIONAL ALLIANCE FOR CONSUMER EMPOWERMENT OF ELECTRIC COOPERATIVES and on behalf of the nine million (9,000,000) member consumers of NEA-Electric Cooperatives nationwide who have contributed the Members' Contributions for Capital Expenditures (MCC) or Reinvestment Fund for Sustainable Capital Expenditures (RFSC),

Petitioners,

- versus -

**ENERGY REGULATORY COMMISSION (ERC), ASELCO, AKELCO, ALECO, ANTECO, AURELCO, BATELEC I, BATELEC II, BENECO, BILECO, BOHECO I, BOHECO II, FIBECO, BUSECO, CAGELCO I, CAGELCO II, CASURECO I, CASURECO II, CASURECO III, CASURECO IV, CAMELCO, CAPELCO, CEBECO I, CEBECO II, CEBECO III, CENECO, CENPELCO, DORECO, DASURECO, ESAMELCO, FLECO, GUIMELCO, IFELCO, INEC, ISECO, ILECO I, ILECO II, ILECO III, ISELCO I, KAELCO, LUELCO, SORECO I, LANECO, LEYECO I/DORELCO, LEYECO II, LEYECO III, LEYECO**

IV, LEYECO V, PENELCO, MOELCO I, MOELCO II, MORESCO I, MORESCO II, MOPRECO, NORECO I, NORSAMELCO, NEECO I, NEECO II – Area I, NEECO II – Area II, PELCO I, PELCO II, CANORECO, PRESCO, QUEZELCO I, QUEZELCO II, SAMELCO I, SAMELCO II, SIARELCO, SOCOTECO I, SOCOTECO II, SOLECO, SUKELCO, SURNECO, SURSECO I, SURSECO II, TARELCO I, TARELCO II, VRESCO, ZAMECO I, ZAMECO II, ZAMCELCO, ZANECO, ZAMSURECO I, ZAMSURECO II, BATANELCO, LUBELCO, OMECO, ORMECO, MARELCO, TIELCO, ROMELCO, BISELCO, FICELCO, MACELCO, TISELCO, BANELCO, PROSIELCO, CELCO, COTELCO, TAWELCO, SIASELCO, SULECO, BASELCO, CASELCO, LASURECO, MAGELCO, DIELCO, and COTELCO-PALMA,

Respondents.

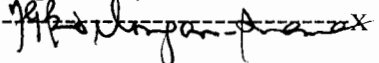
G.R. No. 201852

Present:

SERENO, C.J.,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE,\*  
LEONEN,  
JARDELEZA,\*\* and  
CAGUIOA, JJ.

Promulgated:

April 5, 2016

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## DECISION

**PERALTA, J.:**

This petition for *certiorari* under Rule 65 of the Rules of Court (*Rules*) seeks to declare the illegality and unconstitutionality of the *Members' Contribution for Capital Expenditures (MCC)*, later renamed as *Reinvestment Fund for Sustainable Capital Expenditures (RFSC)*, which is being imposed by on-grid Electric Cooperatives (ECs), pursuant to the following Rules and Resolution of the Energy Regulatory Commission (ERC):



\* On leave.

\*\* No part.

1. Rules for Setting the Electric Cooperatives' Wheeling Rates (RSEC-WR), which was adopted in Resolution No. 20, Series of 2009, issued on September 23, 2009;<sup>1</sup> and
2. Resolution No. 14, Series of 2011, issued on July 6, 2011.<sup>2</sup>

In particular, Article 5 of RSEC-WR states:

**ARTICLE 5**  
**MEMBERS' CONTRIBUTION FOR CAPITAL EXPENDITURES**

**5.1 Function of Members' Contribution for Capital Expenditures**

The Members' Contribution for Capital Expenditures is envisioned to fund the amortization or debt service of its indebtedness associated with the expansion, rehabilitation or upgrading of the existing electric power system of the ECs in accordance with their ERC-approved Capital Expenditure Plan.

**5.2 Utilization of Members' Contribution for Capital Expenditures**

The utilization of the Member's Contribution fund shall be subject to the following conditions:

- a. It shall be used solely for capital expenditure or any other projects approved by the Commission and not for any other purpose, even on a temporary basis;
- b. The amounts collected for Members' Contribution fund shall be recognized as contribution from member-consumers;
- c. The amounts collected for Members' Contribution, including interest income, shall be placed in a separate account; and
- d. If the member-consumer terminates its contract with the EC, the said contribution shall not be withdrawn, instead the same shall be treated as Contribution in Aid of Construction (CIAC).

In the case of ECs registered under the CDA, the said member-contribution shall be converted into member's share capital.

**5.3 Members' Contribution for Capital Expenditure Rate Cap Per Group**

The EC's current tariff includes a reinvestment fund provision calculated at five percent (5%) of its unbundled retail rate (inclusive of generation, transmission, and distribution charges) as part of its Rate

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<sup>1</sup> Entitled "A Resolution Adopting the Rules for Setting the Electric Cooperatives' Wheeling Rates" (Rollo, pp. 68-100).

<sup>2</sup> Entitled "A Resolution Modifying the Terms Members' Contribution for Capital Expenditures (MCC) to Reinvestment Fund for Sustainable Capital Expenditures (RFSC) and MCC-Real Property Tax (RPT) to Provision for RPT as Provided in the Rules for Setting Electric Cooperatives' Wheeling Rates (RSEC-WR)" (Rollo, pp. 130-138).

Unbundling Decision. This translates to an average of 22% of the 98 ECs' distribution charges (inclusive of distribution, supply and metering charges). The Members' Contribution for Capital Expenditure Rate Cap was determined by applying the 22% to the respective group's 2008 median operating costs per kWh which was the basis for the ECs' operating revenue requirements.

The result of the afore-mentioned calculation is presented in Table 7 hereunder:

**TABLE 7. Members' Contribution for Capital Expenditure Rate Cap per Group**

<b>GROUP<sup>3</sup></b>	<b>2008 level (median)</b>	<b>Members' contribution for</b>
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<sup>3</sup> Based on their total operating distribution cost and operating distribution cost per kWh, which, in turn, are affected by size (defined as number of customers) and consumption (defined as MWH sales per customers), the RSEC-WR classified the on-grid ECs into seven (7) groups as follows:

**GROUP A**

Aurora (AURELCO)  
Biliran (BILECO)  
Camiguin (CAMELCO)  
Guimaras (GUIMELCO)  
Ifugao (IFELCO)  
Kalinga-Apayao (KAELCO)  
Leyte III (LEYECO III)  
Mt. Province (MOPRECO)  
Quezon II (QUEZELCO II)  
Quirino (QUIRELCO)  
Siargao (SIARELCO)

**GROUP B**

Abra (ABRECO)  
Antique (ANTECO)  
Camarines Sur I (CASURECO I)  
Camarines Sur IV (CASURECO IV)  
Lanao Del Norte (LANECO)  
Leyte I (LEYECO I/DORELCO)  
Leyte IV (LEYECO IV)  
Misamis Occidental I (MOELCI I)  
Eastern Samar (ESAMELCO)  
Northern Samar (NORSAMELCO)  
Samar I (SAMELCO I)  
Samar II (SAMELCO II)  
Sorsogon (SORECO I)  
Southern Leyte (SOLECO)  
Surigao Del Sur I (SURSECO I)  
Surigao Del Sur II (SURSECO II)

**GROUP C**

Bohol II (BOHECO II)  
Cagayan II (CAGELCO II)  
Camarines Sur III (CASURECO III)  
Isabela II (ISELCO II)  
Sorsogon II (SORECO II)

**GROUP D**

Agusan Del Sur (ASELCO)  
Bukidnon II (BUSECO)  
Cebu III (CEBECO III)  
Davao Oriental (DORECO)

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First Laguna (FLECO)  
Iloilo III (ILECO III)  
Maguindanao (MAGELCO)  
Misamis Occidental II (MOELCI II)  
Misamis Oriental II (MORESCO II)  
Negros Oriental I (NORECO I)  
Nueva Viscaya (NUVELCO)  
Pampanga Rural (PRESCO)  
Pangasinan I (PANELCO I)  
Sultan Kudarat (SUKELCO)  
Surgao Del Norte (SURNECO)  
Zambales I (ZAMECO I)  
Zambales II (ZAMECO II)

## GROUP E

Aklan (AKELCO)  
Bohol I (BOHECO I)  
Bukidnon I (FIBECO)  
Cagayan I (CAGELCO I)  
Camarines Norte (CANORECO)  
Capiz (CAPELCO)  
Cebu I (CEBECO I)  
Cebu II (CEBECO II)  
Davao Del Sur (DASURECO)  
Iloilo I (ILECO I)  
Iloilo II (ILECO II)  
La Union (LUELCO)  
Leyte V (LEYECO V)  
Negros Occidental (NOCECO)  
Negros Oriental II (NORECO II)  
North Cotobato (COTELCO)  
Nueva Ecija I (NEECO I)  
Nueva Ecija II (NEECO II) Area I  
Nueva Ecija II (NEECO II) Area II  
Pampanga I (PELCO I)  
Pangasinan III (PANELCO III)  
Quezon I (QUEZELCO I)  
Tarlac I (TARELCO I)  
Tarlac II (TARELCO II)  
V-M-C Rural Electric Service (VRESKO)  
Zamboanga Del Norte (ZANECO)  
Zamboanga Del Sur I (ZAMBURECO I)  
Zamboanga Del Sur II (ZAMBURECO II)

## GROUP F

Agusan Del Norte (ANEKO)  
Albay (ALECO)  
Batangas I (BATELEC I)  
Benguet (BENECO)  
Camarines Sur II (CASURECO II)  
Central Pangasinan (CENPELCO)  
Davao Del Norte (DANEKO)  
Ilocos Norte (INEC)  
Ilocos Sur (ISECO)  
Isabela I (ISELCO I)  
Misamis Oriental I (MORESCO I)  
Pampanga II (PELCO II)  
Peninsula (PENELCO)  
San Jose City (SAJELCO)  
So. Cotabato (SOCOTECO I)

## GROUP G

Batangas II (BATELEC II)  
Central Negros (CENECO)

		<b>CAPEX @ 22%</b>
<b>A</b>	<b>2.420000</b>	<b>0.5324</b>
<b>B</b>	<b>1.820000</b>	<b>0.4004</b>
<b>C</b>	<b>1.680000</b>	<b>0.3696</b>
<b>D</b>	<b>1.140000</b>	<b>0.2508</b>
<b>E</b>	<b>1.320000</b>	<b>0.2904</b>
<b>F</b>	<b>0.990000</b>	<b>0.2178</b>
<b>G</b>	<b>0.690000</b>	<b>0.1518</b>

#### 5.4 Additional Members' Contribution for Capital Expenditure

The actual capital expenditure may vary among ECs. In the event that the members' contribution for capital expenditures rate caps herein authorized are insufficient for its purpose, the EC may collect such additional Members' Contribution for Capital Expenditures by securing the consent of its member-consumers for such collection through existing legal procedures, provided the expenditure was approved by the Commission as part of such EC's Capital Expenditure Plan. Provided further that the additional member contribution is obtained prior to the incurrance of the indebtedness[;] provided finally that the collection of said additional contribution shall be subject to the principles of fairness and equity, in accordance with the objective of the EPIRA for the elimination of cross-subsidy.

Collections made pursuant to this (*sic*) provisions may be subject to the audit of the Commission at its discretion.<sup>4</sup>

On the other hand, Resolution No. 14 provides:

**NOW, THEREFORE, be it RESOLVED, as the ERC hereby RESOLVES to AMEND the nomenclature of "Members' Contribution for Capital Expenditures (MCC)" and the "MCC-Real Property Tax (RPT)" to "Reinvestment Fund for Sustainable Capital Expenditures (RFSC)" and "Provision for RPT", respectively, but the nature and purpose of the same remain, to wit:**

The MCC is envisioned to fund the amortization or debt service of the ECs' indebtedness associated with the expansion, rehabilitation or upgrading of their existing electric power system in accordance with their ERC-approved CAPEX Plan. The utilization of the MCC fund shall be subject to the following conditions:

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Leyte II (LEYECO II)  
Pampanga III (PELCO III)  
So. Cotabato II (SOCOTECO II)  
Zamboanga City (ZAMCELCO) (*Rollo*, pp. 75-77).  
*Rollo*, pp. 85-87.

1. It shall be used solely for CAPEX or any other projects approved by the ERC and not for any other purpose, even on a temporary basis;
2. The amounts collected for MCC fund shall be recognized as contribution from member-consumers;
3. The amounts collected for MCC, including interest income, shall be put in a separate account; and
4. If the member-consumer terminates his contract with the EC, the said contribution shall not be withdrawn instead the same shall be treated as CIAC.

In the case of ECs registered under the CDA, the said member-contribution shall be converted into member's share capital.

In the event that the MCC rate caps are insufficient for its purpose, the EC may collect such additional MCC by securing the consent of its member-consumers for such collection through existing legal procedures; Provided that, the expenditure was approved by the ERC as part of the EC's CAPEX Plan; Provided further that, the additional MCC is obtained prior to the incurrence of the indebtedness; Provided finally that, the collection of said additional MCC shall be subject to the principles of fairness and equity in accordance with the objective of the EPIRA for the elimination of cross-subsidy.<sup>5</sup>

The alleged grounds for the petition are as follows:

(A)

THE IMPOSITION OF MCC OR RFSC BY THE ENERGY REGULATORY COMMISSION AS A FORM OF INVESTMENT SOLICITATION TO FUND THE EXPANSION AND OTHER CAPITAL [EXPENDITURES] OF ELECTRIC COOPERATIVES IS HIGHLY IRREGULAR[,] OPPRESSIVE[,] AND UNCONSTITUTIONAL AS IT DIRECTLY VIOLATES THE DUE PROCESS AND EQUAL PROTECTION CLAUSES ON PROPERTY UNDER SECTION 1 ARTICLE III OF THE 1987 CONSTITUTION.

(B)

THE MANDATORY COLLECTION OF THE MCC OR RFSC BY THE ELECTRIC COOPERATIVES FROM ITS MEMBER-CONSUMERS WITHOUT THE PROPER EXPLICIT ACCOUNTING ENTRIES AND ACKNOWLEDGMENT OF BEING A PATRONAGE CAPITAL AND WITHOUT THE BENEFIT OF A FAIR RETURN OF THEIR INVESTMENTS OR PATRONAGE CAPITAL INPUT OR CONTRIBUTIONS IS TANTAMOUNT TO TAKING A PROPERTY WITHOUT JUST COMPENSATION AND IS VIOLATIVE OF THE PROVISION OF SECTION 9, ARTICLE III OF THE 1987 CONSTITUTION.

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<sup>5</sup>

*Id.* at 132-133.

(C)  
THE RULING OF ERC ALLOWING THE MANDATORY COLLECTION OF MCC OR RFSC BY THE ELECTRIC [COOPERATIVES] [ECs] IS UNDOUBTEDLY UNCONSTITUTIONAL AS IT DIRECTLY VIOLATES SECTION 10, ARTICLE II AND SECTION 1 & 15, ARTICLE XII OF THE 1987 CONSTITUTION.

(D)  
THE UNJUST COLLECTION OF THE MCC OR RFSC BY THE ELECTRIC COOPERATIVES AS AUTHORIZED AND RULED BY ERC IS CONTRARY TO LAW AS NOWHERE IN THE PROVISIONS OF P.D. 269 DOES IT SAY THAT MEMBERS ON A VOLUNTARY AND COOPERATIVE MANNER WILL PROVIDE CAPITAL TO FUND THE CAPITAL EXPENDITURES BY THE COOPERATIVES. IT LIKEWISE VIOLATES SECTION 37 OF P.D. 269.<sup>6</sup>

In a nutshell, the issue for petitioners is not about the nomenclature of MCC/RFSC or how such funds are utilized but in the ERC's treatment of MCC/RFSC as a subsidy/funds for capital expenditures (CAPEX) or contribution in aid of construction (CIAC) instead of patronage capital, which is an equity or investment that must be accounted for and could be withdrawn by the member-consumers upon termination of their contract with respondent ECs.<sup>7</sup>

The petition is dismissed.

### ***Legal standing of petitioners***

Petitioners claim that as Board members/officers of the National Alliance for Consumer Empowerment of Electric Cooperatives (NACEELCO) they have the required legal standing to assail the validity of MCC/RFSC imposed by the ECs under the RSEC-WR and Resolution No. 14 issued by the ERC. They also stand to be benefited or injured by the judgment in this suit because they are member-consumers of the ECs who were required to and did pay the MCC/RFSC, as shown by the electric bills appended to the petition. Further, over and above their personal capacity as member-consumers, petitioners, like party-list representatives Briones of AGAP, Payuyo of Association of Philippine Electric Cooperatives (APEC), and Ping-ay of Cooperative-National Confederation of Cooperatives (Coop-NATCO), represent their constituents who are paying EC member-consumers in good standing.

Even assuming that no direct injury is or will continue to be suffered, petitioners contend that the liberal policy consistently adopted by the Court on *locus standi* must apply. They view that the issues raised in this petition

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<sup>6</sup> *Id.* at 42-43.

<sup>7</sup> *Id.* at 37, 3683.



are of paramount public importance as it does not merely involve the constitutionality of MCC/RFSC but also the plight of the member-consumers of ECs nationwide. For them, the transcendental importance of this case cannot simply be ignored as it also involves the economic well-being of more than half of the Philippine population. Two contesting parties are said to be laying claim on the ownership of the ECs, to wit: (1) the persons running the ECs being directly controlled by the NEA, which has not contributed any funds to fund debt-servicing except loan accommodations with high interest rates, and (2) the member-consumers of ECs who have continuously contributed their hard-earned money to fund the operations, cost, and debt-servicing of the ECs.

Only petitioners Ping-ay and Ramirez satisfy the requirement of *locus standi*.

Petitioners have no legal standing to file this petition in their capacity as NACEELCO Board members. It was not shown that respondent ECs are members of NACEELCO. Further, while petitioners claim that they represent nine million member-consumers of the ECs, they have not attached to the petition any documentary proof as regards their purported authority to file the case on their behalf.

Also, petitioners Payuyo and Rosales have no legal standing to file the case as member-consumers of the Palawan Electric Cooperative, Inc. (PALECO) and Agusan Del Norte Electric Cooperative, Inc. (ANECO), respectively.<sup>8</sup> Even if ANECO is within the coverage of RSEC-WR, it is not impleaded as respondent in the petition. As for PALECO, it is neither a part of any group enumerated in RSEC-WR nor is it impleaded as respondent herein.

While the Court held that legislators have the standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in their office and are allowed to sue to question the validity of any official action which they claim infringes their prerogatives as legislators,<sup>9</sup> there was no specific allegation of usurpation of legislative function in this case. Moreover, We do not view that the procedural rules on standing should be waived on the ground that the issues raised in this petition are of transcendental importance. To consider a matter as one of transcendental importance, all of the following must concur: (1) the public character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other

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<sup>8</sup> *Id.* at 102, 107.

<sup>9</sup> *Sergio R. Osmena III v. Power Sector Assets and Liabilities Management Corporation, et al.*, G.R. No. 212686, September 28, 2015.

party with a more direct and specific interest in the questions being raised.<sup>10</sup> As will be shown in the discussion below, elements (2) and (3) are obviously lacking in this case.

The above notwithstanding, petitioners Ping-ay and Ramirez have the legal standing to sue. Ping-ay is a member-consumer of respondent Ilocos Sur Electric Cooperative, Inc. (ISECO).<sup>11</sup> On the other hand, Ramirez is undisputedly the spouse of Mary Ramirez,<sup>12</sup> who is the registered member-consumer of respondent Eastern Samar Electric Cooperative, Inc. (ESAMELCO). Mary, who is not one of the petitioners, only needs to be impleaded as a *pro-forma* party to the suit based on Section 4, Rule 4 of the *Rules*.<sup>13</sup> The determination of whether Mary is a party who is indispensable or necessary or neither indispensable nor necessary would no longer matter since, as We said, Ping-ay possesses the required *locus standi* for the Court to already take cognizance of the case.

It is a general rule that every action must be prosecuted or defended in the name of the real party-in-interest, who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.

Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest." "To qualify a person to be a real party-in-interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced."

"Legal standing" or *locus standi* calls for more than just a generalized grievance. The concept has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.

A party challenging the constitutionality of a law, act, or statute must show "not only that the law is invalid, but also that he has sustained or is in immediate, or imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way." It must shown that he has been, or is about to be, denied some right or privilege to which he is lawfully entitled, or that he is about to be subjected to some burdens or penalties by reason of the statute complained of.<sup>14</sup>

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<sup>10</sup> See *Chamber of Real Estate and Builders' Ass'ns., Inc. v. Energy Regulatory Commission (ERC), et al.*, 638 Phil 542, 556-557 (2010).

<sup>11</sup> *Rollo*, p. 105.

<sup>12</sup> *Id.* at 103-104.

<sup>13</sup> *Navarro v. Hon. Judge Escobido*, 621 Phil. 1, 19 (2009).

<sup>14</sup> *Jose J. Ferrer, Jr. v. City Mayor Herbert Bautista, etc., et al.*, G.R. No. 210551, June 30, 2015.

Tested by the foregoing standards, petitioners Ping-ay and Ramirez clearly have legal standing to file the petition. They are real parties-in-interest to assail the constitutionality and legality of RSEC-WR and Resolution No. 14. Their cause of action to declare invalid the subject Rule and Resolution is related to their right to seek a refund of the payments made and to stop future imposition of the MCC/RFSC.

### ***Rule 65 as a Remedy***

Despite the legal standing of petitioners Ping-ay and Ramirez, their choice of remedy to question the validity of RSEC-WR and Resolution No. 14 is inexcusably inapposite.

Section 1, Rule 65 of the *Rules* mandates:

SECTION 1. *Petition for certiorari.* - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.  
x x x

The Court agrees with respondents that RSEC-WR and Resolution No. 14 were issued by the ERC in its quasi-legislative power.

A respondent is said to be exercising *judicial function* where he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties.

*Quasi-judicial function*, on the other hand, is “a term which applies to the actions, discretion, *etc.*, of public administrative officers or bodies ... required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.”

Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights of persons or property under which adverse claims to such rights are made, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the respective rights of the contending parties.<sup>15</sup>

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<sup>15</sup> *Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 524, 540-541 (2004).

As defined above, the ERC exercised neither judicial nor quasi-judicial function. In issuing and implementing the RSEC-WR and Resolution No. 14, it was not called upon to adjudicate the rights of contending parties to exercise, in any manner, discretion of a judicial or quasi-judicial nature. Instead, RSEC-WR and Resolution No. 14 were done in the exercise of the ERC's quasi-legislative and administrative functions. It was in the nature of subordinate legislation, promulgated in the exercise of its delegated power. Quasi-legislative power is exercised by administrative agencies through the promulgation of rules and regulations within the confines of the granting statute and the doctrine of non-delegation of powers flowing from the separation of the branches of the government.<sup>16</sup> Particularly, the ERC applied its rule-making power as expressly granted by Republic Act (R.A.) No. 9136 (“Electric Power Industry Reform Act of 2001” or EPIRA), to wit:

SEC. 43. *Functions of the ERC.* - The ERC shall xxx be responsible for the following key functions in the restructured industry:

x x x x

f. **In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility**, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

- (i) For purposes of determining the rate base, the TRANSCO or any distribution utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: *Provided, however,* That ERC may give an exemption in case of unusual devaluation: *Provided, further,* That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;
- (ii) Interest expenses are not allowable deductions from permissible return on rate base;

<sup>16</sup> *Gil G. Cawad, et al. v. Florencio B. Abad, et al.*, G.R. No. 207145, July 28, 2015.

- (iii) In determining eligible cost of services that will be passed on to the end-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO and distribution utilities including systems losses, interruption frequency rates, and collection efficiency;
- (iv.) Further, in determining rate base, the TRANSCO or any distribution utility shall not be allowed to include management inefficiencies like cost of project delays not excused by *force majeure*, penalties and related interest during construction applicable to these unexcused delays; and
- (v.) **Any significant** operating costs or **project investments of the** TRANSCO and **distribution utilities** which **shall become part of the rate base** shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest. (Emphasis supplied)<sup>17</sup>

<sup>17</sup> Rule 15 of the IRR of R.A. No. 9136 provides:  
Section 5. *Ratemaking Design and Methodology.*

(a) The ERC shall, in the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and Retail Rates for the Captive Market of a Distribution Utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities, as well as the expansion or improvement of the Transmission facilities pursuant to a plan approved by the ERC under Section 10 of Rule 6 on Transmission Sector, and the Distribution Utilities under Rule 7 on Distribution Sector. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable RORB to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be nondiscriminatory and shall take into consideration, among others, the franchise tax. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

- (i) For purposes of determining the rate base, the TRANSCO or its Buyer or Concessionaire or any Distribution Utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: *Provided, however,* That ERC may give an exemption in case of unusual devaluation: *Provided, further,* That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;
- (ii) Interest expenses are not allowable deductions from permissible RORB;
- (iii) In determining eligible cost of services that will be passed on to the End-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO or its Buyer or Concessionaire and Distribution Utilities including systems losses, interruption frequency rates, and collection efficiency;
- (iv) Further, in determining rate base, the TRANSCO or its Buyer or Concessionaire or any Distribution Utility shall not be allowed to include management inefficiencies like cost of project delays not excused by *force majeure*, penalties and related interest during construction applicable to these unexcused delays;
- (v) Any significant operating costs or project investments of the TRANSCO or its Buyer or Concessionaire and Distribution Utilities which shall become part of the rate base shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest; and
- (vi) The interest incurred during construction may be capitalized and included in the rate base upon commissioning of the asset.

Granting *arguendo*, that the MCC/RFSC imposition is in the exercise of the ERC's quasi-judicial function, still, the petition should have been filed before the Court of Appeals, which may entertain a petition for *certiorari* whether or not the same is in aid of its appellate jurisdiction.<sup>18</sup> Indeed, petitioners violated the principle of hierarchy of courts. As We said in one case:

x x x The petitioners appear to have forgotten that the Supreme Court is a court of last resort, not a court of first instance. The hierarchy of courts should serve as a general determinant of the appropriate forum for Rule 65 petitions. The concurrence of jurisdiction among the Supreme Court, Court of Appeals and the Regional Trial Courts to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction does not give the petitioners the unrestricted freedom of choice of forum. By directly filing Rule 65 petitions before us, the petitioners have unduly taxed the Court's time and attention which are better devoted to matters within our exclusive jurisdiction. Worse, the petitioners only contributed to the overcrowding of the Court's docket. We also wish to emphasize that the trial court is better equipped to resolve cases of this nature since this Court is not a trier of facts and does not normally undertake an examination of the contending parties' evidence.<sup>19</sup>

Since the Court of Appeals and the Supreme Court have original concurrent jurisdiction over petitions for *certiorari*, the rule on hierarchy of courts determines the venue of recourses to these courts. In original petitions for *certiorari*, this Court will not directly entertain special civil action unless the redress desired cannot be obtained elsewhere based on exceptional and compelling circumstances to justify immediate resort to this Court,<sup>20</sup> which We found none in the present case that likewise involves factual questions. Time and again, it has been held that this Court is not a trier of fact.<sup>21</sup>

Glaringly, petitioners did not comply with the rule that “*there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.*” Since petitioners assail the validity of the ERC issuances and seeks to declare them as unconstitutional, a petition for declaratory relief under Rule 63 of the *Rules* is the appropriate remedy. Under the *Rules*, any person whose rights are affected by any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.<sup>22</sup>

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x x x

<sup>18</sup> Rule 65, Sec. 4.

<sup>19</sup> *Kalipunan ng Damayang Mahihirap, Inc. v. Robredo*, G.R. No. 200903, July 22, 2014, 730 SCRA 322, 332-333.

<sup>20</sup> *Chamber of Real Estate and Builders' Ass'ns., Inc. v. Energy Regulatory Commission (ERC), et al.*, *supra* note 10, at 559.

<sup>21</sup> *Heirs of Spouses Hilario and Bernardina N. Marinas v. Bernardo Frianeza, et al.*, G.R. No. 179741, December 9, 2015.

<sup>22</sup> Rule 63, Sec. 1.

Noticeably, administrative remedies should have been exhausted by filing the case in the ERC, which, has technical expertise, at the very least, to dwell on the issue. Considering that petitioners are challenging the MCC/RFSC, which is a rate component under the RSEC-WR, the original and exclusive jurisdiction is vested with the ERC, pursuant to Section 43 of R.A. No. 9136, which states:

SEC. 43. *Functions of the ERC.* - The ERC shall xxx be responsible for the following key functions in the restructured industry:

x x x x

u. **The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities** and over all cases involving disputes between and among participants or players in the energy sector. (Emphasis supplied)<sup>23</sup>

All actions taken by the ERC, pursuant to R.A. No. 9136, are subject to judicial review. As an independent quasi-judicial agency in the exercise of its quasi-judicial functions, its judgment, final order or resolution is appealable to the Court of Appeals *via* Rule 43 of the *Rules*, and, if still unfavorable, to this Court *via* Rule 65.

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system.<sup>24</sup> As opined in a case:

The doctrine of exhaustion of administrative remedies allows administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The doctrine entails lesser expenses and provides for the speedier resolution of controversies. Therefore, direct recourse to the trial court, when administrative remedies are available, is a ground for dismissal of the action.

<sup>23</sup> Rule 3 of the IRR of R.A. No. 9136 provides:  
Section 4. *Responsibilities of the ERC.*

x x x x

(n) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed in the exercise of its powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector relating to the foregoing powers, functions and responsibilities.

x x x x

(p) All actions taken by the ERC pursuant to the Act are subject to judicial review and the requirements of due process and the cardinal rights and principles applicable to quasi-judicial bodies.

x x x

<sup>24</sup> *United Overseas Bank of the Philippines, Inc. v. The Board of Commissioners-HLURB*, G.R. No. 182133, June 23, 2015.

The doctrine, however, is not without exceptions. Among the exceptions are: (1) where there is *estoppel* on the part of the party invoking the doctrine; (2) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (3) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (4) where the amount involved is relatively so small as to make the rule impractical and oppressive; (5) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (6) where judicial intervention is urgent; (7) where the application of the doctrine may cause great and irreparable damage; (8) where the controverted acts violate due process; (9) where the issue of non-exhaustion of administrative remedies had been rendered moot; (10) where there is no other plain, speedy and adequate remedy; (11) where strong public interest is involved; and (12) in *quo warranto* proceedings.<sup>25</sup>

Assuming, for argument's sake, that this case falls under any of the recognized exceptions, just the same, the petition must be dismissed for being filed out of time. Under the *Rules*, a petition for *certiorari* should be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed. In this case, Resolution No. 20, which adopted the RSEC-WR, and Resolution No. 14 were issued by the ERC on September 23, 2009 and July 6, 2011, respectively. The petition was filed only on May 31, 2012, which is manifestly way beyond the reglementary period.<sup>26</sup>

It is significant to note that, in drafting RSEC-WR, the ERC conducted a series of expository hearings and public consultations for all ECs in Luzon, Visayas, and Mindanao, and that it was only after taking into account the various manifestations, comments, and oppositions during the public consultations that a new methodology for setting the ECs' wheeling rates was developed. The *Whereas* clauses of Resolution No. 20 narrated this long and tedious process:

**WHEREAS**, the current rates of ECs are no longer responsive since the costs of providing electric service to the consumers increased significantly from the time their rates were determined by the Commission based on 2000 test year;

**WHEREAS**, the ECs are cognizant of the inherent regulatory lag in the current cash flow rate-setting methodology adopted through a quasi-judicial process which is further exacerbated by the fact that if all the one hundred twenty (120) ECs file their respective rate applications with each application to the resolved in one (1) month, it will take the Commission one hundred twenty (120) months or ten (10) years, to resolved all the applications;

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<sup>25</sup> *Department of Finance v. Hon. Dela Cruz, Jr.*, G.R. No. 209331, August 24, 2015.

<sup>26</sup> *Rollo*, p. 3.



**WHEREAS**, the Commission has conducted studies to establish a new rate-setting methodology for ECs that will address their present problems and resolve the regulatory lag in the resolution of rate applications, particularly, the “Benchmarking Methodology”;

**WHEREAS**, the results of said “Benchmarking Methodology” studies were subjected to several expository and public consultations which were held on various dates and venues. The ECs attended and actively participated in the said expository and public consultations and submitted data to the Commission reflecting their respective costs of service as part of the “Benchmarking Methodology” studies;

**WHEREAS**, the rates as determined in the said “Benchmarking Methodology” encourage the ECs to be financially self-sufficient, efficient and member-customer responsive;

**WHEREAS**, on May 3 and 4, 2007, the Commission conducted a series of expository hearings for all ECs in Luzon, Visayas and Mindanao on the proposed “Benchmarking Methodology” for ECs;

**WHEREAS**, on May 17, 2007, the Commission conducted a public consultation on the “Classification of ECs for Regulatory Purposes and the Proposed Efficiency Benchmarking Methodology”;

**WHEREAS**, on various dates, the Commission conducted a series of Expository Public Consultations for all ECs in Luzon, Visayas and Mindanao on the classification of on-grid ECs and the determination of the functionalized benchmark Operation and Maintenance (O&M) rate, Capital Expenditure (CAPEX) rate, proposed customer segmentation, proposed benchmark rate design, new lifeline charges, performance indices, transition period and rate comparison;

**WHEREAS**, after considering all the comments and manifestations during the various public consultations, the Commission developed a new methodology for setting the ECs' wheeling rates embodied in a document denominated as “Rules for Setting the Electric Cooperatives' Wheeling Rates” (RSEC-WR);

**WHEREAS**, on April 4, 2009, the General Managers of all the on-grid Electric Cooperatives (ECs) in the Philippines adopted *Resolution No. 1, Series of 2009*, entitled “A Resolution Imploring Upon the Energy Regulatory Commission to Implement a New Rate-Setting Methodology for Setting the Electric Cooperatives' Wheeling Rates (RSEC-WR)”;

**WHEREAS**, on April 21, 2009, the Commission issued a Notice of Proposed Rule-Making (Notice), wherein it treated the Resolution adopted by the General Managers of all the on-grid ECs as a petition to initiate rule-making by the ECs that are signatories thereto, docketed as ERC Case No. 2009-007 RM, entitled “*In the Matter of the Petition by the On-Grid Electric Cooperatives for the Adoption of the Rules for Setting the Electric Cooperatives' Wheeling Rates*”. The Draft RSEC-WR adopted the Rule-Making proceedings under Rule 21 of the Commission's Rules of Practice and Procedure. All interested parties were directed to submit their respective comments on the Draft RSEC-WR until May 15, 2009 and said petition was set for public hearings on various dates and venues;

**WHEREAS**, on various dates, several ECs and interested parties submitted their respective comments on the Draft RSEC-WR;

**WHEREAS**, from May 17 to July 20, 2009, the Commission conducted public hearings on the instant petition at the respective localities of the ninety-six (96) on-grid ECs;

**WHEREAS**, on August 19, 2009, the Commission posted at its website and published in newspapers of general circulation in the Philippines the revised Draft RSEC-WR for solicitation of comments from interested parties;

**WHEREAS**, on various dates, several ECs and interested parties submitted their respective comments on the revised Draft RSEC-WR;

**WHEREAS**, in accordance with the aforesaid mandate and after a careful consideration of the various views and comments submitted by the interested parties, the Commission adopts and promulgates the RSEC-WR[.]<sup>27</sup>

As ordered by the ERC, copies of Resolution No. 20 were furnished to the University of the Philippines Law Center – Office of the National Administrative Register (UPLC-ONAR), Philippine Rural Electric Cooperatives' Association, Inc. (PHILRECA),<sup>28</sup> and all on-grid ECs. In addition, PHILRECA was directed to publish the RSEC-WR in a newspaper of general circulation in the Philippines.<sup>29</sup>

Petitioners could have filed their comment/opposition to the draft of RSEC-WR or appealed its final version. Alternatively, they could have filed a comment/opposition, motion for reconsideration, petition for relief from judgment or appeal with regard to the rate adjustment applications of their respective ECs. The records of this case, voluminous as they are, are bereft of evidence that they did.

Finally, it bears to stress that a petition for *certiorari* under Rule 65 is the proper remedy when the respondent has committed grave abuse of discretion amounting to lack or excess of jurisdiction.

The term “grave abuse of discretion” has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a “capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.” The abuse of discretion must be so patent and gross as to amount to an “evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and

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<sup>27</sup> *Id.* at 98-100.

<sup>28</sup> PHILRECA is the national association of all electric cooperatives organized and registered pursuant to the provisions of P.D. No. 269, as amended. (*Rollo*, p. 3532).

<sup>29</sup> *Rollo*, p. 100.

despotic manner by reason of passion and hostility.” Furthermore, the use of a petition for *certiorari* is restricted only to “truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void. x x x”<sup>30</sup>

The stringent criterion imposed by the above-quoted precludes Us from giving due course to this petition. The ERC rests on solid legal grounds as it is indubitably empowered to establish and enforce a methodology for setting the distribution wheeling rates of respondent ECs. The delegation of legislative powers by the Congress to the ERC is explicit in Section 43 (f) and (u) of R.A. No. 9136, which is elaborated in Section 5 (a), Rule 15 and Section 4 (n), Rule 3, respectively, of the IRR; hence, the presumption of regularity of MCC/RFSC must be upheld.

As a new regulatory framework for the on-grid<sup>31</sup> ECs, RSEC-WR is designed to achieve the following:

1. Develop a tariff setting methodology that would be more responsive to the needs of the ECs given the objectives of the EPIRA;
2. Encourage reforms in the structure and operations of the ECs for greater efficiency and lower costs;
3. Introduce incentives in the framework that will allow efficiency gains to be shared between the EC and the end-users; and
4. Develop a regulatory framework that will ease regulatory burden and cut down regulatory lag for implementation.<sup>32</sup>

Prior to the RSEC-WR, the ECs operated under a cash flow regulatory regime, which allows the ECs to generate revenues sufficient to cover payroll, operations and maintenance outlays, debt service, including interest and allowance strictly for reinvestment purposes.<sup>33</sup> The ECs’ tariff structure was equivalent to the Distribution, Supply, and Metering (DSM) Charges, which consisted of Operations and Maintenance Expenses (OPEX), Payroll and Other Revenue Item (ORI), Capital Expenditures (CAPEX) or Reinvestment Fund and Debt Service.<sup>34</sup> With the enactment of R.A. No. 9136, the operating and the capital costs are unbundled.<sup>35</sup> The DSM Charges represent only operating costs, while a separate charge, Members’ Contribution for Capital Expenditures (MCC) represent the ECs debt service

<sup>30</sup> *Yu v. Judge Reyes-Carpio*, 667 Phil. 474, 481-482 (2011).

<sup>31</sup> Sec. 4 of R.A. 9513 (“Renewable Energy Act of 2008”) provides:

(kk) “On-Grid System” refers to electrical systems composed of interconnected transmission lines, distribution lines, substations, and related facilities for the purpose of conveyance of bulk power on the grid of the Philippines[.]

<sup>32</sup> *Rollo*, p. 72.

<sup>33</sup> *Id.* at 69.

<sup>34</sup> *Id.* at 131.

<sup>35</sup> Pursuant to the declared policy of the State to ensure transparent and reasonable prices of electricity, R.A. No. 9136 mandates distribution utilities like electric cooperatives to functionally and structurally identify, separate and unbundle their rates, charges, and costs. (See Sections 2 (c) and 36 of R.A. No. 9136 as well as Sec. 4 [j.] Rule 3, Sec. 4 [b.] and [m.] Rule 7, and Sec. 3 [a] Rule 15 of its IRR)

and capital expenditure requirements.<sup>36</sup> In the new tariff structure under the RSEC-WR, the OPEX, Payroll and ORI are translated into DSM Charges, while the Reinvestment Fund and Debt Service are translated into MCC.<sup>37</sup>

As admitted by respondents, the MCC is not a new imposition on the member-consumers of the ECs. Before the formulation of said MCC Charge, the rates of all the ECs already include a Reinvestment Fund provision calculated at five percent (5%) of their unbundled retail rates, inclusive of Generation, Transmission and Distribution Charges.<sup>38</sup> The intent of the RSEC-WR in translating Reinvestment Fund into MCC is to recognize the fact that said MCC Charge indeed represents contributions from the member-consumers for the expansion, rehabilitation and upgrading of the ECs' distribution system which should be reflected in their bills for greater transparency.<sup>39</sup> When MCC was eventually designated as RFSC, only the appellation changed; its nature and purpose remain the same.

Under Presidential Decree (P.D.) No. 269,<sup>40</sup> respondent ECs are vested with all powers necessary or convenient for the accomplishment of its corporate purpose that is supportive of the declared State policy of promoting sustainable development in the rural areas through rural electrification.<sup>41</sup> Such powers include, but are not limited to the power:

X X X X

(g) To construct, purchase, lease as lessee, or otherwise acquire, and to equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, lands, buildings, structures, dams, plants, and equipment, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(h) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise

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<sup>36</sup> *Rollo*, p. 78.

<sup>37</sup> *Id.* 131.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> CREATING THE "NATIONAL ELECTRIFICATION ADMINISTRATION" AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES (Issued and took effect on August 6, 1973)

<sup>41</sup> Sec. 2 of P.D. No. 269, as amended by Sec. 2 (a) of R.A. No. 10531 ("*National Electrification Administration Reform Act of 2013*") which was signed into law on May 7, 2013.

dispose of or encumber franchises, rights, privileges, licenses and easements;

x x x x

(j) To construct, acquire, own, operate and maintain electric subtransmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways. In the event of the need of such lands and thoroughfares for the primary purpose of the government, the electric cooperative shall be properly compensated;

(j-1) To construct, acquire, own, operate and maintain generating facilities within its franchise area. x x x

x x x x

(p) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.<sup>42</sup>

Further, Section 35 of P.D. 269, which remains untouched despite amendments to the law, provides:

SEC. 35. *Non-profit, Non-discriminatory, Area Coverage Operation and Service.* - A cooperative shall be operated on a non-profit basis for the mutual benefit of its members and patrons; shall, as to rates and services make or grant no unreasonable preference or advantage to any member or patron nor subject any member or patron to any unreasonable prejudice or disadvantage; shall not establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service; shall not give, pay or receive any rebate or bonus, directly or indirectly, or mislead its members in any manner as to rates charged for its services; and shall furnish service on an area coverage basis; *Provided, That for any extension of service which if treated on the basis of standard terms and conditions is so costly as to jeopardize the financial feasibility of the cooperative's entire operation, the cooperative may require such contribution in aid of construction*, such facilities extension deposit, such guarantee of minimum usage for a minimum term or such other reasonable commitment on the part of the person to be served as may be necessary and appropriate to remove such jeopardy, but no difference in standard rates for use of service shall be imposed for such purpose.

x x x<sup>43</sup> (Emphasis supplied)

The MCC/RFSC is, therefore, an instrument to realize the foregoing statutory powers and prerogatives of ECs. It is a charge that is vital to ensure

<sup>42</sup> Section 16 of P.D. No. 269, as amended by Sec. 9 of R.A. No. 10531.

<sup>43</sup> Identical to Sec. 37 of R.A. No. 6038, which was expressly repealed by P.D. No. 269.

the quality, reliability, security, and affordability of electric power supply. To prevent any prejudice to the public interest, the ERC is authorized to establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates that takes into account all relevant considerations, such as the expansion or improvement of the transmission facilities pursuant to the ERC-approved plan.<sup>44</sup>

In closing, the Court observes that the ECs, whether under the control and supervision of the National Electrification Administration (NEA) or registered with the Cooperative Development Authority (CDA), use the RSEC-WR or collect MCC/RFSC contributions from their member-consumers.<sup>45</sup> Petitioners, however, excluded as parties to this case the CDA-registered ECs, such as QUIRELCO (in Group A), ABRECO (in Group B), ISELCO II (in Group C), SORECO II (in Group C), PANELCO I (in Group D), NUVELCO (in Group D), NORECO II (in Group E), and DANECO (in Group F), SAJELCO (in Group F), and PELCO III (in Group G).<sup>46</sup> Instead, what they impleaded were the nineteen (19) off-grid<sup>47</sup> ECs, namely: BATANELCO, LUBELCO, OMECO, ORMECO, MARELCO, TIELCO, ROMELCO, BISELCO, FICELCO, MASELCO, TISELCO, BANELCO, PROSIELCO, CELCO, TAWELCO, SIASELCO, SULECO, BASELCO, and DIELCO.<sup>48</sup> It is contended that although these ECs are not covered by RSEC-WR, the ERC authorizes them to collect a Reinvestment Fund as component of their over-all rate.<sup>49</sup>

If petitioners admit that the ECs, whether they belong to the off-grid or on-grid category and whether they are CDA or NEA registered, are proper parties to the petition as they will either suffer or benefit from the decision of the Court,<sup>50</sup> then they should have equally impleaded as parties to the case the CDA-registered ECs and the off-grid ECs. As indispensable parties, CDA-registered ECs should have been joined as petitioners or respondents pursuant to Section 7, Rule 3 of the *Rules*.<sup>51</sup> The reason behind this compulsory joinder of indispensable parties is the complete determination of all possible issues, not only between the parties themselves but also as

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<sup>44</sup> Sec. 5 (a) Rule 15, IRR of R.A. No. 9136.

<sup>45</sup> See Comment of MORESCO I, MORESCO II, BUSECO, CAMELCO, MOELCI-I, MOELCI-II, LANECO, FIBECO, and VRESCO (*Rollo*, pp. 209, 340, 443, 568, 1033-1034, 1137, 1235-1236, 1359-1360, 3619). However, in the Comment of LEYECO II, it stated that ECs under the CDA operate for profit; thus, their rates formula is Return-On-Rate-Base (RORB) such that its power rate computation has profit factor component. (*Rollo*, p. 1848)

<sup>46</sup> See Comment of SUKELCO (*Rollo*, p. 1757).

<sup>47</sup> Sec. 4 of R.A. 9513 ("*Renewable Energy Act of 2008*") provides:

(jj) "*Off-Grid Systems*" refer to electrical systems not connected to the wires and related facilities of the On-Grid Systems of the Philippines[.]

<sup>48</sup> See Answer-In-Intervention of PHILRECA (*Rollo*, p. 3544).

<sup>49</sup> See Comment of impleaded off-grid ECs (BATANELCO, LUBELCO, OMECO, ORMECO, MARELCO, TIELCO, ROMELCO, BISELCO, MASELCO, BANELCO, PROSIELCO, BASELCO, and DIELCO) as well as the Answer-In-Intervention of PHILRECA (*Rollo*, pp. 860, 2610, 2793, 3071, 3547).

<sup>50</sup> See Petitioners' Comment and Reply to Answer-In-Intervention of PHILRECA (*Rollo*, p. 3928).

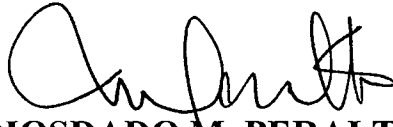
<sup>51</sup> SEC. 7. *Compulsory joinder of indispensable parties.* - Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

regards other persons who may be affected by the judgment.<sup>52</sup> While relief may be afforded to petitioners without the presence of the CDA-registered ECs, it is uncertain whether the case can be finally decided on its merits without taking into account, if not prejudicing, the rights and interests of the latter.

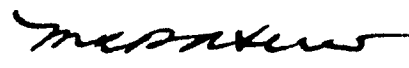
There being no meritorious reason for Us to suspend the rules of procedure, any discussion on substantive issues raised for resolution are unnecessary.

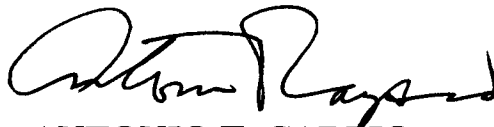
**WHEREFORE**, the petition is **DISMISSED** for inexcusable procedural and technical defects. Costs against petitioner.

**SO ORDERED.**


  
**DIOSDADO M. PERALTA**  
 Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice

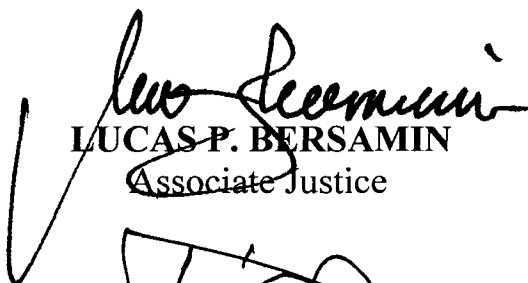
  
**ANTONIO T. CARPIO**  
 Associate Justice

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice

  
**TERESITA J. LEONARDO-DE CASTRO**  
 Associate Justice

  
**ARTURO D. BRION**  
 Associate Justice

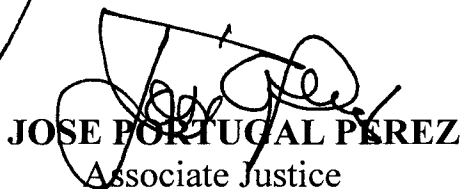
<sup>52</sup> *Crisologo v. JEW M Agro-Industrial Corporation*, G.R. No. 196894, March 3, 2014, 717 SCRA 644, 656.



**LUCAS P. BERSAMIN**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice



**JOSE PORTUGAL PEREZ**  
Associate Justice

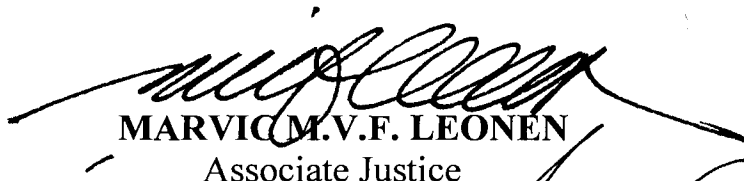


**JOSE CATRAL MENDOZA**  
Associate Justice

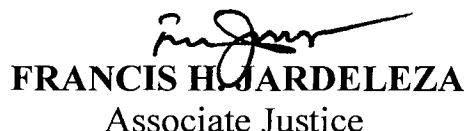


**BIENVENIDO L. REYES**  
Associate Justice

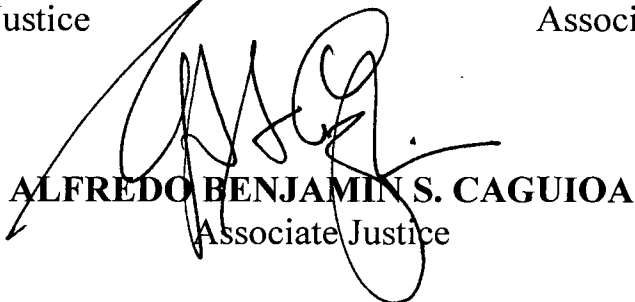
On leave  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**MARVIC M.V.F. LEONEN**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice

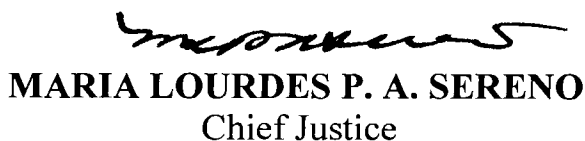


**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

*no part  
primarily  
active*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**MARIA LOURDES P. A. SERENO**  
Chief Justice